IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14433 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BILLIMORA VIBHAG KELVANI MANDAL

Versus

H.N.DESAI & OTHERS

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Appearance:

1. Special Civil Application No. 14433 of 2003

MR RAVINDRA SHAH for Petitioner No. 1

MRS KANAN R SHAH for Petitioner No. 1

MS TEJAL A VASHI for Respondent No. 1

MR JAYRAJ CHAUHAN with MR MUKUND M DESAI for Respondent No. 2

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 04/12/2003

ORAL JUDGEMENT

Heard the learned Advocates.

Rule. Learned Advocates Ms. Vashi and Mr. Chauhan waive service for respondents Nos. 1 and 2 respectively.

The petitioner, management of the College, challenges the judgement and order dated 29th August, 2003 passed by the learned Gujarat Affiliated Colleges

Services Tribunal in Appeal No.2 of 2002. The College Management had decided to remove the respondent No.1, Lecturer in Accountancy, from service for want of workload. After following procedure as envisaged in Ordinance 69-A(8)(B) of the South Gujarat University, the respondent No.2 herein, approval was sought from the Vice Chancellor of the University. The Vice Chancellor under order dated 30th March, 2002, opined that the management had failed to follow the procedure, inasmuch as after receiving the report of the enquiry officer, no notice was given to the concerned Lecturer i.e. respondent No.1 herein. The Vice Chancellor, therefore, refused to accord approval to the proposal made by the management. Feeling aggrieved, the management preferred the above referred Appeal No. 2 of 2002 before the Tribunal. The said Appeal has been dismissed by the Tribunal under the impugned judgement and order. The Tribunal has held that the management did not send the enquiry report to the Vice Chancellor along with its proposal. Thus, the management failed to comply with the procedural requirement as envisaged under Ordinance 69-A(8). Feeling aggrieved the management has preferred the present petition.

Mr. Shah has submitted that the respondent No.1 was sought to be removed from service for want of sufficient workload. The management was, therefore, under obligation to follow the procedure as envisaged in Ordinance 69-A (8)(B) of South Gujarat University. The said procedure does not envisage giving of notice to the Lecturer concerned after receipt of the report of the enquiry officer. The Vice Chancellor, thus, committed mistake in holding that the management did not follow the proper procedure. He has submitted that it never was the case of the Vice Chancellor that the relevant papers i.e. the report of the enquiry officer was not submitted to the Vice Chancellor. Nonetheless, the Tribunal has held that the relevant papers were not sent to the Vice Chancellor and hence rejected the appeal preferred by the management.

In answer to the notice issued by this Court respondents Nos. 1 and 2 have appeared and have contested the petition. Both the respondents have relied upon Ordinance 69-A (9) and have submitted that it was the duty of the management to give notice to the Lecturer concerned after receipt of the report of the enquiry officer. Both the respondents have, therefore, supported the order of the Tribunal.

I am unable to agree with the respondents.

Ordinance 69-A (9) of South Gujarat University, deals with removal of a teacher from service on the grounds:

(1) misconduct or gross negligence of duty,
(2) incompetence
(3) moral turpitude

In the present case, respondent No.1 was not sought to be removed from service on either of the aforesaid three grounds. The Ordinance 69-A(9), therefore, cannot be pressed into service. The relevant provisions are contained in Ordinance 69-A (8). sib-clause (i) of Clause (B) of the said Ordinance reads as under:-

"69-A(8)(B)

(i) Service of a confirmed teacher shall not be terminated by the Management except on any one or more of the following grounds and except with the previous approval of the Vice Chancellor:

(a) The teacher's continuance in service is prejudicial to the smooth or efficient working of the college.

(b) The teacher's continuance in service is prejudicial to maintenance of discipline among the members of the staff or the students.

(c) The teacher is rendered surplus on account of reorganisation of subject taught in the college or education of workload in the college, provided, that the junior-most Teacher/Teachers only in the Department is/are served with this notice.

In the present case, as recorded hereinabove, service of respondent No.1 was required to be terminated on account of reduction in workload, i.e. the respondent No.1 had been rendered surplus. Hence, it is the aforesaid Ordinance 69-A (8)(B) which should be attracted. The provisions contained in the said Ordinance do not envisage giving of notice to the teacher concerned after the report of the enquiry officer is received. Hence, in my view the Vice Chancellor has erred in rejecting the proposal made by the management on the ground that such notice was not given to the

respondent No.1.

The learned Tribunal appears to have erred in believing that the report of the enquiry officer was not submitted to the Vice Chancellor. It was never the case of the Vice Chancellor that such report was not received. Even if such report were not received, the defect could be cured by calling for such report before considering the case. Any lapse on the part of the management in this regard would not vitiate the entire proceedings. Hence, the learned Tribunal has erred in dismissing the appeal on the ground not germane to the subject matter.

In the result the petition shall succeed. The impugned judgement and order of the Tribunal dated 29th August, 2003 passed in Appeal No. 2 of 2002 is quashed and set aside. The Appeal No. 2 of 2002 preferred by the management is allowed. The order of the Vice Chancellor dated 30th March, 2002 made on the proposal made by the petitioner management is quashed and set aside.

The proposal made by the petitioner management is remanded to the Vice Chancellor for reconsideration in the light of the provisions contained in Ordinance 69-A(8)(B) of the South Gujarat University.

Rule is made absolute accordingly. The parties shall bear their own costs.

(Ms. R.M. Doshit, J.)
*/Mohandas